

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 12-0103 JP/LFG
CR 10-1563 JP

CIPRIANO CARDENAS-URIARTE,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This matter is before the Court, *sua sponte* under rules 4(b), 11(a) of the Rules Governing Section 2255 Cases, on Defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence (CV Doc. 1).

On January 17, 2012, the Court entered judgment (CR Doc. 80) on Defendant's conviction. On January 18, 2012, Defendant filed a notice of appeal (CR Doc. 82), and no order terminating the appeal appears of record. "Absent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending." *United States v. Cook*, 997 F.2d 1312, 1319 (10th Cir. 1993); *cf. Wright v. Lansing*, No. 99-3335, 2000 WL 219965, at *1 (10th Cir. Feb. 25, 2000) (stating rule for § 2241 petition during military appeal); *but cf. United States v. De La Campa Rangel*, 519 F.3d 1258, 1265-66 (10th Cir. 2008) (authorizing § 2255 motion during pending appeal). The § 2255 motion asserts no such extraordinary circumstances, and Defendant is not entitled to relief at this time. *See* rule 4(b). The motion will be dismissed without prejudice.

Furthermore, *sua sponte* under rule 11(a), the Court determines that Defendant has failed to make a substantial showing that he has been denied a constitutional right. The Court will therefore

deny a certificate of appealability.

IT IS THEREFORE ORDERED that Defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence (CV Doc. 1) is DISMISSED without prejudice; a certificate of appealability is DENIED; and this civil proceeding is DISMISSED.



UNITED STATES DISTRICT JUDGE